



ATTORNEYS AT LAW

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December 15, 2009

**By ECF Filing**

Magistrate Judge A. Kathleen Tomlinson  
United States District Court – Eastern District New York  
100 Federal Plaza, Courtroom 910  
Central Islip, New York 11722-9014

Re: Peter Capone, et al. v. Mark Goldman, et al. 09 Civ. 1208(SJF)

Dear Mag. Judge Tomlinson:

My firm represents the plaintiffs in this action.

I am writing to request a telephone conference to seek the Court's guidance as to how to proceed in light of Your Honor's Endorsed Order upon my prior letter, dated December 15, 2009.

As set forth in my December 14 letter, plaintiffs timely served a motion to serve a Second Amended Complaint on December 7, 2009. After the parties received Your Honor's Order, dated December 14, 2009, defendant Jeffrey Daniels advised that he was withdrawing his objection to plaintiff's serving the amended pleading, and, as set forth in my December 14 letter, I was intending to e-file the Second Amended Complaint yesterday.

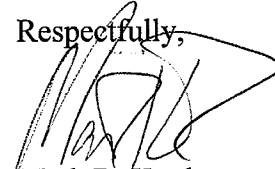
However, as Your Honor may be aware, yesterday, December 15, defendant Mark Goldman, acting *pro se*, e-filed a letter, a purported and untimely Answer to plaintiffs' Amended Complaint and a Third-Party Complaint. In addition to the lateness of the filing, Mr. Goldman's submission appears to be a reversal of the position he took at his deposition, on November 10, 2009, at the Nassau Correctional Center, pursuant to an Order of the Bankruptcy Court in one of the adversary proceedings involving Goldan, LLC, at which Mr. Goldman asserted the Fifth Amendment and refused to answer a single question concerning his admitted criminal fraud.

In all events, Your Honor's Endorsed Order was issued after Mr. Goldman's filing, and states that "Plaintiffs' counsel is REQUIRED to file a Stipulation executed by all parties confirming their consent to the filing of a Second Amended Complaint before that pleading is accepted for filing." I respectfully request the telephone conference to determine whether Your Honor directs that I need to obtain Mr. Goldman's signature on the Stipulation, and, if that is not possible, whether I need to re-serve the motion upon Mr. Goldman.

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I thank Your Honor for consideration of this request.

Respectfully,



Mark R. Kook

cc: Jeffrey C. Daniels, Esq. (by e-mail)  
Fred S. Kantrow, Esq. (by e-mail)